FOR ARGUMENT

No. 79-616

In the Supreme Court of the United States

OCTOBER TERM, 1979

MOHASCO CORPORATION, PETITIONER

v.

RALPH H. SILVER

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF FOR THE UNITED STATES AND THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION AS AMICI CURIAE

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. A23-A44) is reported at 602 F.2d 1083. The opinion of the district court (Pet. App. A1-A21) is unofficially reported at 19 Fair Empl. Prac. Cas. 677.

JURISDICTION

The judgment of the court of appeals was entered July 18, 1979. The petition for a writ of certiorari was filed on October 15, 1979, and was granted on December 10, 1979, limited to the first question presented in the petition. The jurisdiction of this Court rests on 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether a charge of discrimination that is received by the Equal Employment Opportunity Commission 291 days after the alleged discriminatory occurrence and is immediately referred to the appropriate state agency is timely under Section 706 of the Civil Rights Act of 1964, as amended.

STATUTES AND REGULATIONS INVOLVED

Section 706(c) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(c), provides:

> In the case of an alleged unlawful employment practice occurring in a State, or political subdivision of a State, which has a State or local law prohibiting the unlawful employment practice alleged and establishing or authorizing a State or local authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, no charge may be filed under subsection (b) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated, provided that such sixty-day period shall be extended to one hundred and twenty days during the first year after the effective date of such State or local law. If any requirement for the commencement of such proceedings is imposed by a State or local authority other than a requirement of the filing of a written and signed statement of the facts upon which the proceeding is based, the proceeding shall be deemed to have been commenced for the purposes of this subsection at the time such statement is sent by registered mail to the appropriate State or local authority.

Section 706(e) of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e-5(e), provides:

> A charge under this section shall be filed within one hundred and eighty days after the alleged unlawful employment practice occurred and notice of the charge (including the date, place and circumstances of the alleged unlawful employment practice) shall be served upon the person against whom such charge is made within ten days thereafter, except that in a case of an unlawful employment practice with respect to which the person aggrieved has initially instituted proceedings with a State or local agency with authority to grant or seek relief from such practice or to institute criminal proceedings with respect thereto upon receiving notice thereof, such charge shall be filed by or on behalf of the person aggrieved within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated the proceedings under the State or local

law, whichever is earlier, and a copy of such charge shall be filed by the Commission with the State or local agency.

The relevant regulation of the Equal Employment Opportunity Commission, 29 C.F.R. 1601.12(a) and (b) (1977) as in effect when this case arose, provided in pertinent part:

> (a) In order to give full weight to the policy of section 706(c) of the Act, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by Title VII and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission where there is no evidence that such allegations were earlier presented to an appropriate 706 Agency * * * It is the experience of the Commission that because of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act. Accordingly, it is the intent of the Commission to simplify filing procedures for parties in deferral States and localities and thereby avoid the accidental forfeiture of important Federal rights.
>
> (b) The following procedures shall be followed with respect to cases arising in the jurisdiction of "706 Agencies" to which the Commission defers as further defined in paragraph (c) of this section:
>
> (1) Any document, whether or not verified, received by the Commission as provided in § 1601.7, which may constitute a charge cognizable under Title VII, shall be deferred to the appropriate 706 Agency, as further defined in paragraph (c) of this section, as provided in the procedures set forth below.
>
> * * * * *
>
> (1)(v) * * *
>
> (A) In cases where the document is submitted to the Commission more than 180 days from the date of the alleged violation but within the period of limitation of the particular 706 Agency, the case shall be deferred pursuant to the procedures set forth above: *Provided, however,* That unless the Commission is earlier notified of the termination of the State or local proceedings, the Commission will consider the charge to be filed with the Commission on the 300th day following the alleged discrimination and will commence processing the case. Where the State or local agency terminates its proceedings prior to the 300th day following the alleged act of discrimination, without notification to the Commission of such termination, the Commission will consider the charge to be filed with the Commission on the date the person making the charge was notified of the termination.

29 C.F.R. 1601.13 (1979), currently in force, provides in pertinent part:

> (a) The timeliness of a charge shall be measured for purposes of satisfying the filing requirements of section 706(e) of Title VII by the date on which the charge is received by the Commission.
>
> * * * * *
>
> (c) Deferral policy. (1) In order to give full weight to the policy of section 706(c) of the

Act, which affords State and local fair employment practice agencies that come within the provisions of that section an opportunity to remedy alleged discrimination concurrently regulated by Title VII and State or local law, the Commission adopts the following procedures with respect to allegations of discrimination filed with the Commission where there is no evidence that such allegations were earlier presented to an appropriate 706 Agency. It is the intent of the Commission to thereby encourage the maximum degree of effectiveness in the State and local agencies. * * *

* * * * *

(d) * * *

(2) For purposes of satisfying the filing requirement of section 706(c) of Title VII, the Commission shall assume jurisdiction over a document described in paragraph (d)(1) of this section as follows:

* * * * *

(iii) Where the document is submitted to the Commission more than 180 days from the date of the alleged violation but within 300 days and within the period of limitation of the appropriate 706 agency, the Commission shall process the document in accordance with paragraph (d)(1) of this section and shall assume jurisdiction 60 (or where appropriate, 120) days after the 706 agency proceedings have been commenced, except that where the Commission is earlier notified of the termination of the State proceedings, it shall immediately assume jurisdiction upon receipt of such notice.

INTEREST OF THE UNITED STATES

The Equal Employment Opportunity Commission is the agency established by Congress to administer, interpret, and enforce federal employment discrimination statutes, including Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e *et seq.* Petitioner challenges Commission regulations and procedures, in use for over 12 years, interpreting and applying two procedural provisions of Title VII that concern the jurisdiction of the Commission to consider and act on allegations of discrimination.

STATEMENT

1. The facts relevant to the issue before the Court are not in dispute. Respondent was discharged from employment by petitioner on August 29, 1975. On June 15, 1976—291 days after his discharge—the Equal Employment Opportunity Commission (EEOC) received a letter from respondent charging that he had been discriminatorily discharged by petitioner because of his religion (Pet. App. A2). Immediately upon receiving respondent's letter, the EEOC mailed it to the New York State Division of Human Rights, in accordance with EEOC regulations and procedures. See 29 C.F.R. 1601.12(b) (1977), pages 4-5, *supra.* New York has a one-year statute of limitations for filing charges with the Human Rights Division, N.Y. Exec. Law § 297(5) (McKinney Supp. 1972-1979), and the complaint was therefore timely under state law.

An EEOC memorandum sent to the Human Rights Division with petitioner's letter stated: "The Commission will automatically file this charge at the expiration of the deferral period, unless we are notified before the expiration of that period that your agency has terminated its proceedings" (Pet. App. A6-A7). On August 20, the EEOC notified petitioner that respondent had filed a charge of employment discrimination (Pet. App. A7), and informed respondent of that notification (Pet. 4). On February 9, 1977, the Human Rights Division determined that there was not probable cause to believe petitioner had discriminated against respondent and ordered his state complaint dismissed (Pet. App. A7-A8, A26, A45-A46).[1] The EEOC concluded on August 24, 1977, that the timeliness, deferral and all other jurisdictional requirements had been met, but that there was not reasonable cause to believe respondent's charge was true (Pet. App. A8, A26, A49-A50). Respondent then filed this action on November 23, 1977 (Pet. App. A8, A26).

2. The district court dismissed the complaint, concluding that it did not have jurisdiction over the subject matter because respondent had not filed a timely charge with the EEOC (Pet. App. A1-A21).[2]

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[1] Dismissal of the state complaint was affirmed by the State Human Rights Appeal Board on December 22, 1977 (Pet. App. A47-A48).

[2] The district court also dismissed respondent's claim against individual defendants because they were not named in the charge filed with the EEOC and dismissed that portion of the complaint alleging post-charge discrimination because the charge did not assert a continuing violation (Pet. App. A3-A6, A19-A20). The court of appeals affirmed the former holding but reversed the latter (Pet. App. A27 n.7, A35-A36). These issues are not embraced by the grant of the petition for a writ of certiorari.

The court held that respondent's charge of discrimination could not be deemed to have been "filed" with the EEOC under Section 706(e) of the Act, 42 U.S.C. 2000e-5(e), prior to the expiration of the 60-day period provided in Section 706(c), 42 U.S.C. 2000e-5(c), for the state to review the charge, unless the state disposed of the charge in a shorter period of time. Because the 60-day period did not expire in this case until August 14, 1976—more than 300 days after respondent's discharge—the court held that his charge filed with the EEOC was untimely under Section 706(e), even though it had been received by the EEOC within the 300-day limitations period provided in Section 706(e) (Pet. App. A10).

The district court declined to follow the pertinent EEOC regulation, 29 C.F.R. 1601.12(b)(1)(v)(A) (1977) (see page 5, *supra*), which provided that where a complaint was submitted to the Commission more than 180 days after the alleged violation, the Commission would consider the charge to be filed with the Commission on the 300th day following the alleged discrimination. To the court (Pet. App. A18), the regulation "seem[ed] contrary to the plain, although still complicated, language" of Sections 706(c) and (e).

Thus, the district court held that a charging party "must, unless the state or local proceeding is swiftly terminated, notify the EEOC of the alleged violation at least 240 days after the date of the alleged violation if he wishes his charge to be timely" (Pet. App. A12).

3. The court of appeals reversed, one judge dissenting (Pet. App. A23-A44). Stressing the remedial nature of Title VII, and therefore eschewing "technical" or "rigid" application of its procedural requirements (Pet. App. A29-A30, citing *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 761 (1979), and *Love* v. *Pullman Co.*, 404 U.S. 522 (1972)), the court held that respondent's charge was timely filed under Section 706(e) when it was initially received by the EEOC within the 300-day limitations period and that the EEOC's procedure for referring charges to local agencies for 60 days satisfied Section 706(c), even where the 60-day period expires more than 300 days after the alleged discriminatory occurrence.

The court concluded that the language in Section 706(c) providing that "no charge may be filed" with the EEOC before the expiration of 60 days after proceedings have been commenced under state or local law "simply means that the EEOC may not process a Title VII complaint until sixty days after it has been referred to a state agency" (Pet. App. A31). The court found this interpretation to be consistent with the holding in *Love* v. *Pullman Co.*, *supra*, that a

charge received by the EEOC may be held in "suspended animation" pending deferral to a state agency and that to require a second "filing" with the EEOC after the 60-day period would create additional procedural obstacles without advancing the purposes of the statute (Pet. App. A30-A31). Again relying on *Love* v. *Pullman Co.*, *supra*, and *Oscar Mayer & Co.* v. *Evans*, *supra*, the court continued (Pet. App. A31-A32; citations omitted):

> This interpretation not only serves the concern of Title VII for individual rights, but also comports with the overarching procedural scheme embodied in the statute. There is little doubt that § 706(c) is designed solely to provide state agencies with an opportunity, before the federal agency intervenes, to resolve disputes between employer and employee. Viewed in this light, it is clear that, because the charge is referred to the local agency after it is "filed" with the EEOC, appropriate respect is accorded the states. Moreover, in no sense can Title VII defendants be said to suffer prejudice or surprise under our reading of § 706(c), for the interpretation we have adopted does not countenance the filing of stale claims. In the instant case appellee had ample notice of the proceedings before the state agency, EEOC, and the district court, which occurred in the sequence envisioned by Title VII.

The court of appeals also found its interpretation of Sections 706(c) and (e) to be supported by the legislative history of the 1972 amendments to Title

VII, during which the Conference Committee "explicitly endorsed" the decision in *Vigil* v. *American Telephone & Telegraph Co.*, 455 F.2d 1222 (10th Cir. 1972), interpreting Title VII of the Act as originally enacted in the same fashion (Pet. App. A33-A34). Finally, the court reasoned that "considerable deference" was due EEOC's consistent interpretation of the statute in this manner throughout the preceding 10 years (Pet. App. A34).

SUMMARY OF ARGUMENT

Section 706(c) of the Civil Rights Act of 1964, as amended, provides that in a state or locality that has established an agency to consider employment discrimination complaints, no charge of discrimination "may be filed" with the Equal Employment Opportunity Commission (EEOC) until 60 days after state or local proceedings have commenced, unless the state proceedings have been earlier terminated. Section 706(e) of the Act provides that a charge of discrimination must be filed with EEOC within 180 days after the alleged discriminatory act, except that the charge must be filed within 300 days where the individual has "initially instituted" proceedings with a state or local agency.

Respondent's charge was received by the EEOC 291 days after his allegedly discriminatory firing by petitioner, and the EEOC immediately forwarded it to the appropriate state agency. Petitioner argues that the charge was untimely under Section 706(e),

even though it was received by the EEOC within 300 days, because the EEOC was precluded by Section 706(c) from formally "filing" the charge for up to the 60 days afforded by Section 706(c) for the state to consider the allegations. However, Section 706(e) is the only provision expressly dealing with the time within which the aggrieved person must file with the EEOC. There is no indication in that section that the 300 days afforded a complainant in a deferral state is implicitly reduced by whatever period (up to 60 days) is necessary to allow the state to consider the allegations pursuant to Section 706(c). Moreover, petitioner's construction of the Act would create considerable uncertainty because the timeliness of a charge in any given case would ultimately depend on whether the state agency could dispose of the complaint before the end of the 300-day period provided in Section 706(e).

Section 706(c) is intended simply "to give state agencies a prior opportunity to consider discrimination complaints," while Section 706(e) serves the usual purpose of a limitations period "to ensure expedition in the filing and handling of those complaints." *Love* v. *Pullman Co.*, 404 U.S. 522, 526 (1972). Accordingly, the natural reading of the Act is that Section 706(c) is addressed to the *EEOC*, and governs what it may treat as an effective filing date for purposes of its own consideration of the complaint, while Section 706(e) exclusively governs the time within which the aggrieved person must file with the EEOC. This straightforward reading of Section 706(e), as imposing a clear 300-day limita-

tions period in deferral states, is particularly appropriate "in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love* v. *Pullman Co.*, *supra*, 404 U.S. at 527. To effectuate the policy embodied in Section 706(c), the federal complaint may then be "held in abeyance" (*Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 764 (1979)), or held in "suspended animation" (*Love* v. *Pullman Co.*, *supra*, 404 U.S. at 526) pending the 60-day deferral period, just as was done by the EEOC here.

What is more, the EEOC has long taken the position that a charge of discrimination received by the EEOC within the 300-day limitations period in deferral states is timely, even where the 60-day period for deferral to the states expires more than 300 days after the alleged discriminatory act. This longstanding and consistent interpretation of Title VII by the EEOC is entitled to great deference.

Finally, and most significantly, the legislative history of the 1972 amendments, when the current Sections 706(c) and (e) were enacted, makes unmistakably clear that Congress intended that a charge filed with the EEOC within 300 days would be timely and that Section 706(c) is only a prohibition against the EEOC's taking any action on the charge during the 60-day deferral period.

There is no merit in petitioner's alternative argument that a complainant must always file with the state agency within 180 days of the alleged discriminatory act in order to invoke the protections of Title VII. Nothing in Section 706(e) so provides. Respond-

ent's charge was timely under New York's one-year limitations period when it was referred by the EEOC to the state agency on the 291st day after the alleged discriminatory occurrence. It would be inconsistent with the entire policy of deference to state procedures to require a complainant, as a prerequisite to invoking his federal rights, to file with the *state* within a *federally imposed* limitations period shorter than the 300 days Congress has established for filing with the EEOC itself in deferral states.

Moreover, as already noted, EEOC regulations in effect since 1968 have interpreted Section 706(e) and its predecessor to allow the complainant the full limitations period (now 300 days) to file with the EEOC in deferral states, irrespective of when he first filed with the state. In enacting Section 706 in 1972, Congress expressly approved the holding in *Vigil* v. *American Telephone & Telegraph Co.*, 455 F.2d 1222 (10th Cir. 1972), interpreting the predecessor of Section 706 as permitting a charge to be filed with the EEOC anytime within the then-applicable 210 day limitation period in deferral states, even though it had not been filed with the state within the shorter 90-day (now 180-day) period petitioner argues for here.

ARGUMENT

The issue in this case is how to reconcile two procedural provisions of Title VII of the Civil Rights Act of 1964, as amended, dealing with the filing of discrimination charges with the Equal Employment

Opportunity Commission in states where there exists a local agency authorized to grant relief. In such situations, Section 706(c) of the Act stipulates that "no charge may be filed [with the EEOC] * * * before the expiration of sixty days after proceedings have been commenced under the State or local law, unless such proceedings have been earlier terminated." On the other hand, Section 706(e) provides that when "the person aggrieved has initially instituted proceedings with a State or local agency," any charge with the EEOC "shall be filed * * * within three hundred days after the alleged unlawful employment practice occurred, or within thirty days after receiving notice that the State or local agency has terminated [its] proceedings * * *, whichever is earlier"—instead of the usual 180 days from the discriminatory act.

Treating the matter solely as a mathematical puzzle—in which all words must be given exactly the same meaning, regardless of all else, and internal consistency is the only criterion—it may be possible to demonstrate a logical solution which forbids effective filing of a federal charge for purposes of the 300-day time limit while the 60-day deferral period is still running. The consequence would be that, to be safe, an aggrieved person must submit his complaint to the state agency not later than 240 days after the act complained of, although he may delay and still be timely if he successfully gambles that the state proceeding will be completed in less than the 60 days

afforded by Section 706(c). But this cumbersome result[3]—yielding a speculative limitations period in every case—is not compelled by the text, is inconsistent with longstanding administrative practice, is contrary to the clear intent of Congress when the provisions were re-enacted in 1972, and is at odds with the statutory purposes of Sections 706(c) and (e). Such a complex rule would be "particularly inappropriate in a statutory scheme in which laymen, unassisted by trained lawyers, initiate the process." *Love* v. *Pullman Co.*, 404 U.S. 522, 527 (1972). In our view, all indicators point to a simpler and more straightforward rule: The person aggrieved has 300 days in which to submit his charge to the EEOC, albeit the EEOC cannot process the charge until the state agency has been afforded at least 60 days to act.[4]

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[3] The result would be even more complicated than indicated in the text. Section 706(c) provides that during the first year of operation of the state or local law, the state or local agency must be given 120, not 60 days, within which to consider the allegations of discrimination. Thus, to be safe, the aggrieved person would have to determine whether the appropriate state or local agency is in its first year of operation and, if so, to file within 180 days to allow the state up to 120 days to act.

[4] Where the state agency terminates its proceedings on the complaint within the 300-day period, however, Section 706(e) expressly requires that the person aggrieved file with the EEOC within 30 days of the termination.

A. The Statutory Text

Section 706 of the Civil Rights Act of 1964, as amended, contains only one provision expressly dealing with the time for filing charges with the Equal Employment Opportunity Commission. This is subsection (e), which by its terms allows 300 days from the date of the act complained of to file with the federal commission whenever the complainant has first sought relief from a state or local agency. The only exception mentioned is where the state proceedings are sooner concluded, in which event the federal charge must be filed thirty days thereafter. But Section 706(e) nowhere suggests that the normal allowance of 300 days is conditioned upon having filed state proceedings at least 60 days earlier. On the contrary, the provision only requires that such proceedings have been "initially instituted"—presumably at *any time* before the 300 days have run, at least when, as here, state law imposes no shorter deadline.

Plainly, if Section 706(e) stood alone, petitioner's argument would be without the slightest textual support. The problem arises only because another provision, Section 706(c), requiring initial deferral to the state agency, specifies that no federal charge "may be filed" until 60 days after state proceedings have commenced (unless sooner terminated). The question is what "filing" means in this subsection. We know from *Love* v. *Pullman Co.*, *supra*, that the provision cannot be read to render a "premature" filing with the EEOC entirely ineffective. On the contrary, that decision teaches us that, although a

charge filed with the EEOC before the person aggrieved has applied to the state agency does not authorize the EEOC to begin processing the charge immediately, it does render unnecessary a second filing with the EEOC by the aggrieved person after the state agency has been afforded 60 days to consider the complaint.[5] In short, Section 706(c) is a prohibition on premature *action* by the EEOC: for *that* purpose, the premature submission is not presently deemed "filed," but remains for a time in "suspended animation." 404 U.S. at 526. It does not follow, however, that such a filing is ineffective as it relates to the statute of limitations for an aggrieved person's submission of charges of discrimination to the EEOC.

Once it is conceded, as *Love* requires, that Section 706(c) does not prohibit "premature" submissions to the EEOC, but is *addressed to the Commission* and controls what it may treat as an effective filing for the purpose of proceeding with its own consideration of the complaint, it is reasonable to look to Section 706(e) for the purpose of determining when the *aggrieved person* may file his charge with the EEOC. Thus, the two texts can be reconciled in a way that gives Section 706(e) its natural role as the only provision that controls timeliness of a charge filed with

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[5] In *Love* v. *Pullman Co.*, the Court upheld the EEOC's longstanding practice of referring a charge of discrimination to a state agency on behalf of the aggrieved person where that person has not filed directly with the state agency before filing with the EEOC. See 29 C.F.R. 1601.13(d) (1979).

the EEOC, while, at the same time, fully recognizing the objective of Section 706(c) to afford the state agency a reasonable opportunity to resolve the complaint. Section 706(c), in this view, simply prohibits the EEOC from taking any action on the charge until expiration of the 60-day deferral period.

B. The Purposes Underlying Section 706(c) and Section 706(e)

The reconciliation just described is directly supported by the prior decisions of this Court recognizing that, although Sections 706(c) and (e) both concern themselves generally with procedures for handling discrimination complaints, the two sections serve quite different purposes. The purpose of the 60-day deferral period in Section 706(c), the Court has said, is merely "to give state agencies a prior opportunity to consider discrimination complaints." *Love* v. *Pullman Co.*, *supra*, 404 U.S. at 526; see also *Oscar Mayer & Co.* v. *Evans*, 441 U.S. 750, 754-756 (1979).[6] There is no indication that it was also

[6] The provision for deferral to state proceedings was inserted in the 1964 Act largely in response to the uneasiness some Senators felt about what they perceived to be "the steady and deeper intrusion of the Federal power in fields where the problem is essentially State and local in character." 110 Cong. Rec. 8193 (1964) (remarks of Sen. Dirksen). Senator Humphrey later explained the purpose of the deferral provisions added to the bill:

> First, we were concerned that States and localities be afforded every opportunity to resolve these difficult problems of racial justice by means of their own agencies and instrumentalities. In this respect it is perfectly proper to describe the substitute package as a * * * "States responsibilities bill."
>
> * * * We sought merely to guarantee that these States—and other States which may establish such programs—will be given every opportunity to employ their expertise and experience without premature interference by the Federal Government.

110 Cong. Rec. 12724-12725 (1964). The Commission's regulations as applied in this case fulfilled the objective of giving the state "every opportunity" to act "without premature interference by the Federal Government."

designed to govern the timeliness of charges filed with the EEOC.

On the other hand, Section 706(e) was designed to "ensure expedition in the filing and handling of * * * complaints." *Love* v. *Pullman Co.*, *supra*, 404 U.S. at 526. As the Court stated in *Occidental Life Insurance Co.* v. *EEOC*, 432 U.S. 355, 371 (1977), "Congress did express concern for the need of time limitations in the fair operation of the Act, but that concern was directed entirely to the initial filing of a charge with the EEOC and prompt notification thereafter to the alleged violator." See also *Electrical Workers* v. *Robbins & Myers, Inc.*, 429 U.S. 229, 239-240 (1976).

The same distinction was drawn by the Court in *Oscar Mayer & Co.* v. *Evans*, *supra*, in construing the directly parallel provision of the Age Discrimination in Employment Act of 1967 (ADEA). There the Court held (441 U.S. at 754-764) that an individual may not bring a suit in federal court under the ADEA until he has resorted to appropriate state ad-

ministrative proceedings. But the Court held that Congress did not intend to require, as a prerequisite to filing a lawsuit under the ADEA, that resort to state proceedings be within whatever time period was provided under state law. The Court concluded that the only limitations periods in the ADEA are contained in Sections 7(d) and 7(e) of the Act, 29 U.S.C. 626(d) and (e), not in Section 14(b), 29 U.S.C. 633(b). Section 7(d) of the ADEA is the counterpart of Section 706(e) of the Civil Rights Act and Section 14(b) is the counterpart of Section 706(c) of the Civil Rights Act. Because the limitation provisions in Sections 7(d) and (e) of the ADEA "adequately protect defendants against stale claims," the Court declined to "attribute to Congress an intent through § 14(b) to add to these explicit requirements by implication"—in that case, by reading Section 14(b) of the ADEA to command compliance with state statutes of limitations in deferral states as a prerequisite to bringing a private action under the ADEA. 441 U.S. at 762-763. In the present case, it would be equally inappropriate to attribute to Congress an intent, this time through Section 706(c), to add to the explicit 300-day limitations provision in Section 706(e) the implicit requirement that the charge be filed with the State no more than 240 days after the alleged discriminatory act.

Moreover, the plaintiff in *Oscar Mayer & Co.* v. *Evans* had never filed a complaint with the state agency prior to filing an action in federal court. But, despite the language in Section 14(b) of the ADEA

that "no suit shall be brought" before expiration of the 60-day deferral period, the Court held that the plaintiff could still comply with the 60-day deferral requirement in Section 14(b) by filing a complaint with the state agency, even though the two-year limitations period in Section 7(e) for bringing an action under the ADEA had expired. The Court held only that the state agency "must be given an opportunity to entertain respondent's grievance before his federal litigation can *continue*" and that his federal action should be "held in abeyance" while he pursued state remedies (441 U.S. at 764; emphasis added).

Section 14(b) of the ADEA is "virtually *in haec verba*" with Section 706(c) of the Civil Rights Act (*Oscar Mayer & Co.* v. *Evans, supra,* 441 U.S. at 755). Thus, in a Title VII action, the comparable language in Section 706(c) that "no charge may be filed" with the EEOC before expiration of the 60-day deferral period must mean only that the state agency "must be given an opportunity to entertain respondent's grievance before his federal [administrative procedure] can *continue,*" and that the EEOC processing may properly be "held in abeyance" (*id.* at 764)—or as the Court stated in *Love* v. *Pullman Co.* (404 U.S. at 526), held in "suspended animation"—until the 60-day period for deferral to state administrative procedure has expired. And just as in the ADEA action involved in *Oscar Mayer,* it does not matter that the deferral to state proceedings is completed after the close of the applicable federal limitations period.

Finally, here, as in *Love* v. *Pullman Co.*, *supra*, 404 U.S. at 526, petitioner "makes no showing of prejudice to its interests" resulting from the procedures used to process respondent's claim. The EEOC notice to petitioner on August 20, 1976,[7] alerted petitioner to respondent's claim, thereby serving the purpose of the limitations provision by giving petitioner "an opportunity to gather and preserve evidence in anticipation of a court action." *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 372.

C. Administrative Practice

Not surprisingly, in view of the language and purposes of Sections 706(c) and (e), the EEOC has at all times treated as effective and timely a federal charge submitted at any point during the 300-day period allowed by Section 706(e) in deferral states, even though the 60-day deferral period would not expire until more than 300 days from the date of the discriminatory occurrence. This interpretation of the present Sections 706(c) and (e) was first

[7] Section 706(e) provides that notice of a charge shall be furnished to the person against whom the charge is filed within 10 days of the filing. In view of the EEOC's regulation, 29 C.F.R. 1601.13(a), providing that the timeliness of a charge for purposes of Section 706(e) shall be measured from the time of the EEOC's receipt of the charge, notice in this case should have been furnished to petitioner within 10 days of the EEOC's receipt of respondent's charge on June 15. However, the legislative history of the 1972 amendments makes clear that the failure to give notice to the person charged is not to affect the rights of the complainant (see Section-by-Section Analysis, 118 Cong. Rec. 7167, 7564 (1972)).

formally included in 1968 in the very same regulation which set forth the policy, approved by the Court in *Love* v. *Pullman Co.*, *supra*, of referring a charge to the state agency on behalf of the aggrieved person and automatically regarding it as "filed" 60 days later. 29 C.F.R. 1601.12(b)(iii) and (v), as added, 33 Fed. Reg. 16409 (1968).[8]

To be sure, the published regulations have not always described that result in the same way. When the present proceedings were instituted, the EEOC regulation provided that when a federal charge is submitted in circumstances where the 60-day deferral period would not expire before 300 days after the act complained of, the EEOC would "consider the

[8] This regulation was promulgated both "to give full weight to the policy of section 706(b) [now 706(c)] of the Act which affords State and local fair employment practice agencies * * * an opportunity to resolve disputes involving alleged discrimination concurrently regulated by Title VII of the Civil Rights Act of 1964 and State or local law" and "to simplify filing procedures for parties in deferral States and localities, and thereby avoid the accidental forfeiture of important Federal rights." 29 C.F.R. 1601.12(a), 33 Fed. Reg. 16408-16409 (1968). The EEOC noted that it was its experience "that because of the complexities of the present procedures, persons who seek the aid of the Commission are often confused and even risk loss of the protection of the Act" (*ibid.*), and the regulation was promulgated to resolve these complexities and potential ambiguities.

Section 706(d) of the Act as originally enacted in 1964—the predecessor to the present Section 706(e)—allowed up to 210 days to file with the EEOC in a deferral state. The regulation issued in 1968 accordingly provided that a charge received within 210 days is timely.

charge to be filed" on the 300th day. 29 C.F.R. 1601.12(b)(1)(v)(A) (1977); see Pet. App. A14, A34 n.20. Today, revised regulations explicitly provide that timeliness for purposes of Section 706(e) shall be gauged by the date of the EEOC's *receipt* of a charge (29 C.F.R. 1601.13(a) (1979)), but that the EEOC's assumption of jurisdiction over the case shall await the expiration of the 60-day deferral period, unless the state agency terminates proceedings sooner (29 C.F.R. 1601.13(d)(2)(iii) (1979)).[9]

[9] Actually, even prior to 1978, EEOC regulations contained two separate sections addressing the filing of complaints. One provided that "a charge is deemed filed when the Commission receives from the person aggrieved a written statement" setting forth the allegations. 29 C.F.R. 1601.11(b) (1970), discussed in *Love* v. *Pullman Co., supra,* 404 U.S. at 524 n.2, 526 n.5. A separate section provided that where the 60-day deferral period would expire more than 300 days after the alleged discriminatory act, the charge would be deemed filed on the 299th or 300th day, and the EEOC would commence processing on that date. See 29 C.F.R. 1601.12(b)(1)(v), as amended, 37 Fed. Reg. 9216 (1972); 29 C.F.R. 1601.12(b)(1)(v)(A) as amended, 40 Fed. Reg. 3210N (1975); see also 29 C.F.R. 1601.12(b)(1)(v), as added, 33 Fed. Reg. 16409 (1968).

The present regulations, providing that a charge is deemed filed when received for purposes of Section 706(e) but that the EEOC will not "assume jurisdiction" until the state has had 60 days to consider the allegations, merely clarified these sections and worked no change as a practical matter. For purposes of satisfying the requirement in Section 706(e) that a charge be filed with the EEOC within 300 days, it matters little whether the charge is formally deemed filed when received or subsequently, on the 299th or 300th day. Although the prior regulations provided that the EEOC would begin processing a charge when it was deemed automatically filed on the 299th or 300th day, even though the 60-day deferral

The upshot is that, in a deferral State, the Commission has always treated as effective for purposes of the limitations provision a charge submitted to it within 300 days of the discriminatory conduct, even though the 60-day deferral period would not expire until after the 300 days had elapsed. On this issue, the EEOC "has not wavered from its general understanding of its powers and the extent to which their exercise is consistent with the goals of the Act." *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, No. 78-1651 (Feb. 20, 1980), slip op. 22-23. As this Court has

period had not yet expired, it is unlikely that this was often done in view of the EEOC's extensive backlog of cases. See *Occidental Life Insurance Co.* v. *EEOC, supra,* 432 U.S. at 369-371. EEOC regulations no longer admit of such an interpretation, and, in any event, respondent's charge in the present case was not processed by the EEOC until after the New York Human Rights Division had 60 days to investigate it (Pet. App. A6-A7).

Petitioner argues (Br. 10-11) that language in *Love* v. *Pullman Co., supra,* discussing the EEOC's regulation providing that a charge is filed when received supports its position herein. The Court stated that the "statutory prohibition of § 706(b) against filing charges that have not been referred to a state or local authority necessarily creates an exception to the regulation requiring filing on receipt [29 C.F.R. 1601.11(b)]." 404 U.S. at 526 n.5. We agree that then-Section 706(b) created an exception to the regulation providing that a charge is filed when received by preventing the EEOC from *processing* the charge until the deferral period of up to 60 days has passed, and the EEOC's regulations now make this clear. See 29 C.F.R. 1601.13(d)(2)(iii), (iv) and (v). In view of the fact that the Court was addressing the court of appeals' concern that the *Commission* might manipulate filing dates (see 404 U.S. at 525), we do not read footnote 5 in *Love* to intimate anything more.

repeatedly held, such a consistent and longstanding interpretation by the EEOC of the requirements of Title VII is entitled to "great deference." *Griggs* v. *Duke Power Co.*, 401 U.S. 424, 433-434 (1971); *McDonald* v. *Sante Fe Trail Transp. Co.*, 427 U.S. 273, 279-280 (1976); *Oscar Mayer & Co.* v. *Evans, supra,* 441 U.S. at 761.

D. The 1972 Amendments

The present Sections 706(c) and (e) were enacted as part of the 1972 amendments to Title VII of the Civil Rights Act of 1964. As explained below, when it enacted these provisions in 1972, Congress expressly approved the interpretation of the predecessor Sections 706(b) and (d) under which a charge was regarded as filed in a timely fashion with the EEOC even though the 60-day deferral period would expire after the statutory period for filing with the EEOC. "When a Congress that re-enacts a statute voices its approval of an administrative or other interpretation thereof, Congress is treated as having adopted that interpretation, and this Court is bound thereby." *United States* v. *Sheffield Board of Commissioners*, 435 U.S. 110, 134 (1978). See also *Don E. Williams Co.* v. *Commissioner*, 429 U.S. 569, 576-577 (1977). This principle has been applied to the 1972 amendments to Title VII. See *Albemarle Paper Co.* v. *Moody*, 422 U.S. 405, 414 n.8 (1975).

Section 706(b), as originaly enacted in 1964, 42 U.S.C. (1970 ed.) 2000e-5(b), provided that "no charge may be filed" before expiration of the 60-day

deferral period, just as the present Section 706(c) does. But the prior Section 706(d) was worded differently from the present Section 706(e). Section 706(d), 42 U.S.C. (1970 ed.) 2000e-5(d), stated that a person had up to 210 days to file in a deferral state if he "has followed the procedure set out in subsection (b)" for filing with a state agency. The reference to subsection (b) and the express requirement that the complainant have "followed" the procedure set out in that subsection might conceivably have been thought to reflect an intent that *completion* of the 60-day deferral period in that subsection was to be a precondition to the formal "filing" of a charge under Section 706(d) (see *Moore* v. *Sunbeam Corp.*, 459 F.2d 811, 824 n.33 (7th Cir. 1972))—although, as noted above, the EEOC never interpreted the prior Section 706 in this manner.

In 1971 the House and Senate Committees both reported bills to amend Title VII that would have made identical changes in what are now Sections 706(c) and (e). Both would have deleted from the present Section 706(c) the provision that "no charge shall be filed" before expiration of the state deferral period and stated instead that "the Commission shall take no action with respect to the investigation of such charge" until the expiration of the 60-day period. S. Rep. No. 92-415, 92d Cong., 1st Sess. 56 (1971); H.R. Rep. No. 92-238, 92d Cong., 1st Sess. 43 (1971). The Senate Report explained the significance of this change:

> This provision retains the present requirement that the Commission defer for a period of 60 days to State or local agencies functioning under appropriate anti-discrimination laws (or 120 days during the first year after the effective date of such law). The only change in the present law is to delete the phrase "no charge may be filed" with the Commission by an aggrieved person in such State or locality. The present statute is somewhat ambiguous respecting Commission action on charges filed prior to resort to the State, or local agency. The new language clarifies the present statute by permitting the charge to be filed but prohibiting the Commission from taking action with respect thereto until the prescribed period has elapsed.

S. Rep. No. 92-415, *supra*, at 36; see also H.R. Rep. No. 92-238, *supra*, at 27.

The bills reported by the House and Senate Committees made a corresponding change in what is now Section 706(e). Each bill deleted the reference in the prior Section 706(d) to subsection (b) and the provision that a complainant in a deferral state has an extended period to file with the EEOC if he "has followed" the procedures for filing with the state. Both committee bills substituted instead the language, eventually enacted, that a complainant has up to 300 days to file with the EEOC if he "initially instituted" state proceedings. The apparent purpose of this change was to indicate that a charge could be filed with the EEOC anytime within 300 days as long as state proceedings were commenced within the 300-

day period, and thereby to correspond the language in Section 706(e) to the change in Section 706(c) expressly permitting a charge to be filed with the EEOC before the state procedures had been invoked but barring the EEOC from acting on the charge before expiration of the 60-day deferral period. The Senate Report expressly states that "subsection [(e)] prescribes the time limits for the filing of a charge" (S. Rep. No. 92-415, *supra*, at 36), in contrast to the description of subsection (c) as retaining the requirement "that the Commission defer for a period of 60 days to State or local agencies" (*ibid.*). There is no suggestion that the time limits Section 706(e) "prescribes" are implicitly modified by the deferral provision in Section 706(c).

The proposed Sections 706(c) and (e) generated no controversy during the floor debates. For reasons unrelated to these sections, the full House adopted a substitute bill in lieu of the committee bill.[10] The substitute bill adopted on the House floor would have made no changes in the prior Section 706(b), and would have amended the prior Section 706(d) to allow up to 180 days to file with the EEOC where there

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[10] The significant controversy on the 1972 amendments centered around the provision in each committee bill giving the EEOC cease-and-desist powers. The House and Senate each adopted a substitute for its respective committee bill that deleted the cease-and-desist provisions and provided instead for the EEOC to sue in federal court. See generally *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 361-365.

was no state agency but retained the 210-day limitations period for filing with the EEOC where the person aggrieved "has followed" the procedures set forth in Section 706(b) for deferral states. See H.R. 1746, 92d Cong., 1st Sess. (1971), reprinted in Subcomm. on Labor of the Senate Comm. on Labor and Public Welfare, 92d Cong., 2d Sess., Legislative History of the Equal Employment Opportunity Act of 1972, 326-332 (Comm. Print 1972) (Leg. Hist.). There was no discussion during the House debates of these features of the substitute bill, and adoption of the substitute bill cannot, therefore, be taken as a considered rejection of the substance of the corresponding provisions of the committee bill. In any event, because the House bill allowed only 30 more days to file with the EEOC in deferral states than in non-deferral states, it is clear that the House bill could not have been intended to require that the 60-day deferral period be exhausted before a charge could be regarded as "filed" with the EEOC for purposes of Section 706(e).

The bill passed by the Senate, in contrast, retained the committee's version of Sections 706(c) and (e), providing that the EEOC could file but could "take no action" on a charge received before expiration of the 60-day deferral period and that the 300-day period was available to a complainant who had "initially instituted" state proceedings. Leg. Hist. 1781. The bill approved by the Conference Committee and eventually enacted contained new subsections (a) through (g) of Section 706 (H.R. Conf. Rep. No. 92-

899, 92d Cong., 2d Sess. 2-6 (1972); S. Conf. Rep. No. 92-681, 92d Cong., 2d Sess. 2-6 (1972); Pub. L. No. 92-261, 86 Stat. 103, 104-107), as the Senate bill did, rather than a selective amendment of that section, as the House bill provided. Section 706(c), as reported by the Conference Committee, to an extent followed the House approach by reenacting the language of the prior 706(b).[11] Section 706(e), on the other hand, is drawn from the Senate bill. The legislative history conclusively demonstrates that Congress' willingness to "split the difference" between the House and Senate bills stemmed from two intervening judicial decisions that conformed to its intent as to how the procedural requirements in Section 706 should be interpreted.

On January 17, 1972, this Court announced its decision in *Love* v. *Pullman Co.*, *supra*, approving the EEOC's policy of referring charges to a state on a complainant's behalf. On February 18, 1972, the Tenth Circuit held in *Vigil* v. *American Telephone & Telegraph Co.*, 455 F.2d 1222, 1224, that a charge filed with the EEOC during the 60-day deferral period did "serve to meet the jurisdictional requirement" of the prior Section 706(d), even where the 60-day deferral period expired after the 210-day period then allowed for filing with the EEOC in deferral states.

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[11] However, the House bill would have left the prior Section 706(b) unamended, rather than reenacting it. This distinction is significant. See pages 36-38, *infra*.

The Conference Committee explained its action as follows:

> The Senate amendment contained two provisions allowing the Commission to defer to state and local equal employment opportunity agencies. It deleted the language of existing law providing that no charge may be filed during the 60-day period allowed for the deferral and substituted a provision prohibiting the Commission from acting on such a charge until the expiration of the 60-day period. The House bill made no change in existing law. The Senate receded with an amendment that would re-state the existing law on the deferral of charges to state agencies. The conferees left existing law intact with the understanding that the decision in *Love* v. *Pullman*, —— U.S. —— (February 7, 1972) interpreting the existing law to allow the Commission to receive a charge (but not act on it) during such deferral period is controlling.
>
> Both the House bill and the Senate amendment provided that charges be filed within 180 days. The Senate allowed an additional 120 days if a charge is deferred to a state agency and the House allowed only 30 additional days. The Senate amendment required that notice of the charge be served in 10 days. The House bill provided that charges under Title VII are the exclusive remedy for unlawful employment practices. The House receded.

S. Conf. Rep. No. 92-681, 92d Cong., 2d Sess. 17 (1972); H.R. Conf. Rep. No. 92-899, 92d Cong., 2d Sess. 17 (1972). Thus, it is clear that Congress intended the Section 706(c) it enacted in 1972 to authorize the EEOC to file (but not act on) a complaint during the deferral period, just as the Senate bill expressly provided.[12] This interpretation is confirmed by the decision of the House conferees to recede to the Senate's new language in Section 706(e), which provides that a charge is timely if state proceedings have been "initially instituted" within the 300 day limitations period.

This understanding is made even more explicit in Senator Williams' Section-by-Section analysis of the bill reported by the Conference Committee—a document this Court has characterized as the "final and conclusive confirmation" of the meaning of the 1972 amendments (see *Occidental Life Insurance Co.* v. *EEOC*, *supra*, 432 U.S. at 365). In explaining the new Sections 706(c) and (d) the analysis provided:

> No change in these provisions was deemed necessary in view of the recent Supreme Court decision of *Love* v. *Pullman Co.*, —— U.S. ——, 92 S.Ct. 616 (1972) which approved the present EEOC deferral procedures as fully in compliance with the intent of the Act. That case held that the EEOC may receive and defer a charge to a State agency on behalf of a complainant and begin to process the charge in the EEOC upon lapse of the 60-day deferral period, *even though*

[12] The critical point, of course, is what Congress understood the import of the *Love* decision to be, for it is that understanding that constitutes the legislative intent pertaining to Section 706(c) and (e). It does not matter for present purposes whether this Court or other courts would read *Love* in the same manner.

the language provides that no charge can be filed under section 706(a) by the person aggrieved before the expiration of sixty days after proceedings have been commenced under the State or local law. Similarly, the recent circuit court decision in *Vigil* v. *AT&T*, —— F.2d ——, 4 FEP Cases 345 (10th Cir. 1972), which provided that in order to protect the aggrieved person's right to file with the EEOC within the time periods specified in section 706(c) and (d), *a charge filed with a State or local agency may also be filed with the EEOC during the 60 day deferral period, is within the intent of this Act.*

118 Cong. Rec. 7167 (1972) (emphasis supplied). The same Section-by-Section Analysis was presented to the House. See 118 Cong. Rec. 7564 (1972).[13]

Thus, this is not a case in which Congress has declined to amend a section previously enacted with the expectation that the untouched section would be interpreted in a certain way. In that situation, as this Court has observed, the understanding or expectation of a later Congress does not necessarily control the interpretation of the statutory language, see, *e.g.*, *Oscar Mayer & Co.* v. *Evans*, *supra*, 441 U.S.

[13] It is instructive that the Section-by-Section Analysis equates the deferral procedures set forth in Section 706(c) and (d). For Section 706(d) provides that where an EEOC Commissioner, rather than the person aggrieved, files a charge, the EEOC, "before taking any action with respect to such charge," must afford a state or local agency a period of at least 60 days to consider it. Congress obviously intended the phrase "no charge may be filed" in Section 706(c) to be the equivalent of the requirement under Section 706(d) that the EEOC take no action during the deferral period.

at 758; *United Air Lines, Inc.* v. *McMann*, 434 U.S. 192, 200 n.7 (1977); *Teamsters* v. *United States*, 431 U.S. 324, 354 n.39 (1977), although such views are entitled to "significant weight," particularly if the intent of the enacting Congress is thought to be uncertain. *Seatrain Shipbuilding Corp.* v. *Shell Oil Co.*, *supra*, slip op. 23-24.

Here, Congress enated a *new* Section 706 in 1972. Although subsection (c) of that section contains language previously contained in subsection (b) of the Act as originally passed in 1964, "[i]t is the intent of the Congress that enacted [the version of Section 706 now in effect] * * * that controls" (*Teamsters* v. *United States*, *supra*, 431 U.S. at 354 n.39), not the intent of Congress in 1964. Thus, even if, contrary to our submission above, the 1964 Act could not reasonably be interpreted in the manner followed by EEOC since 1968,[14] Congress un-

[14] The Seventh Circuit's decision in *Moore* v. *Sunbeam Corp.*, *supra*, written by now Mr. Justice Stevens, is distinguishable on precisely this basis, even if it is viewed as correctly decided. On petition for rehearing, when the Conference Report and the Section-by-Section Analysis of the bill reported by the Conference Committee were called to the court's attention, the court stated that it did "not believe that those 1972 references can be used to shed any light on the proper interpretation of the 1964 legislation." 459 F.2d at 830. The court in *Moore* went further, however, and stated that the references in the 1972 legislative history could not be used "as evidence of what Congress might have done if *Vigil* had been decided differently" (*ibid.*). This observation is dictum, as the court did not have before it a question involving interpretation of the 1972 amendments.

The Seventh Circuit in *Moore* also noted that it could not accept the EEOC's procedure for filing a charge with the

equivocally expressed its intent with respect to the proper interpretation of the Section 706(c) and (e) it enacted in 1972, and that intent must control here.

E. Petitioner's Alternative Argument That a Complaint Must Be Filed With the State Agency Within 180 Days in a Deferral State Is Without Merit

Enough has been said to dispose of petitioner's alternative argument that Section 706(e) requires the person aggrieved to file with the state agency within 180 days as a prerequisite to invoking the procedures of the EEOC and bringing a private action in district court. There is simply nothing in the language or purposes of that section, which sets forth the limitations periods for filing with the *federal government*, to suggest that it also implicitly sets forth a statute of limitations for filing with the state. Cf. *Oscar Mayer & Co.* v. *Evans*, *supra*, 441 U.S. at 758-765.

In the present case, New York has a one-year statute of limitations for charges of discrimination. Respondent's charge of discrimination referred to the

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EEOC on the 209th day and then delaying processing for 60 days while the state is considering the matter, because this would be inconsistent with the provision permitting a complainant to go to district court in 60 days if the EEOC has not processed his complaint. 459 F.2d at 825 n.36, citing Section 706(e) of the original Act, 42 U.S.C. (1970 ed.) 2000e-5(e). But, whatever its merits under the original Act, the point is now mooted by the 1972 amendments, which, in addition to the changes already noted, extended the period for EEOC action on a charge of discrimination from 60 to 180 days. 42 U.S.C. 2000e-5(f)(1).

New York Human Rights Division by the EEOC on June 15, 1976, was therefore timely under state law. It would be inconsistent with Title VII's basic policy of deferral to state consideration of allegations of discrimination to interpret Section 706(e) in a manner that would require a complainant, as a condition to invoking his federal rights, to file a complaint with a *state* agency within a uniform, *federally imposed* limitations period of 180 days. If a state, on the basis of its familiarity with local employment conditions and state administrative procedures, chooses to establish a limitations period of more than 180 days for the filing of complaints with the state agency, no reason appears for interpreting Section 706(e) to require a complainant to forego his federal rights in order to avail himself of the longer limitations period —at least where the EEOC receives the charge and refers it to the state within the mandatory 300-day period Congress *has* established on a nationwide basis for invoking the protection of Title VII in de-

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[15] It is clear that a state may not foreclose resort to the EEOC by establishing a state limitations period of *less* than 180 days. *Olson* v. *Rembrandt Printing Co.*, 511 F.2d 1228, 1232-1233 (8th Cir. 1975); *Davis* v. *Valley Distributing Co.*, 522 F.2d 827, 832-833 (9th Cir. 1975). There is dictum in two appellate cases suggesting that a complaint must be filed with either the state or federal agency in all states within 180 days. *Olson* v. *Rembrandt Printing Co.*, *supra*, 511 F.2d at 1233; *Geromette* v. *General Motors Corp.*, 609 F.2d 1200, 1202 (6th Cir. 1979). But these cases involved state limitations periods of less than 180 days; there was no occasion for the court in either case to consider whether a complaint must be

ferral states.[15] Such an interpretation of Section 706(e) would, of course, create a powerful incentive for complainants to file with the state agency within 180 days, thereby needlessly frustrating the state's policy of allowing employees a longer period to file without serving any countervailing federal policy. For example, if a charge received by a state agency 240 or even 295 days after the alleged act of discrimination is disposed of by the state within the 300-day period provided in Section 706(e), there could be no serious contention that the policies underlying the imposition of a uniform federal limitations period have been undercut. Yet petitioner's argument would render such a complaint untimely for purposes of protecting federal rights.

Petitioner argues, however, that Section 706(e) expressly requires a complainant to file with the *EEOC* within 180 days where there is no state agency to

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filed with the state agency within 180 days even where, as here, the state has a limitations period of *more* than 180 days.

Moreover, because New York has a limitations period of more than 180 days and because respondent's charge was therefore timely under state law when filed on the 291st day, there is no need to consider here whether a charge filed more than 180 days after the alleged discriminatory act is adequate to extend the filing period for filing with the EEOC to 300 days in a state that does *not* have a limitations period of more than 180 days. In this regard, the EEOC's regulations provide for the processing of a charge received more than 180 days after the alleged discriminatory act only where the charge is still timely under state law. 29 C.F.R. 1601.13 (d) (2) (iii) (1979). However, this Court's decision in *Oscar Mayer & Co.* v. *Evans, supra,* suggests that compliance with state limitations periods of whatever duration is not required as a jurisdictional matter.

consider discrimination complaints and that the section must therefore be read to require a like filing with a state agency in deferral states. The additional 120 days allowed under Section 706(e) in deferral states, petitioner argues, were intended to permit the complainant to pursue whatever state administrative remedies he commenced during the first 180 days after the alleged discriminatory act. Quoting the Seventh Circuit's decision in *Moore* v. *Sunbeam Corp., supra,* 459 F.2d at 825 n.35, petitioner concludes (Br. 34) that "complainants in some states were [not] to be allowed to proceed with less diligence than those in other states." However, a complainant in New York or another state having a limitations period of more than 180 days is not permitted up to 300 days to file with the state as the result of an affirmative federal policy to require diligence of complainants in some states but not in others. The extended filing period merely results from the overriding policy in Section 706 of the Act to defer to state programs and procedures to the extent possible in resolving allegations of employment discrimination. If an aggrieved person is allowed up to 300 days to file with a state agency, that is the result of the longer limitations period adopted in that state, a result not prohibited by federal law.

Moreover, the EEOC's regulations have, since 1968, interpreted Section 706(e) and its predecessor to permit the person aggrieved to file a complaint within the federal limitations period of 300 (previously 210) days, whether or not he filed with the state within

the first 180 (previously 90) days. This longstanding and consistent interpretation of the filing requirements is, as we have noted above, entitled to great deference.

What is more, the complainant in *Vigil* v. *American Telephone & Telegraph Co.*, *supra*, had filed his complaint with the state agency more than 150 days after the alleged discriminatory act, and therefore beyond the initial 90-day limitations period provided in the prior Section 706(d). Thus, when Congress approved the holding in *Vigil* and expressed its intent that the *Vigil* holding control the interpretation of Section 706 as enacted in 1972, it necessarily intended that a charge of discrimination need not be filed with the state within 180 days in order for the person aggrieved to avail himself of the extended 300-day filing period in a deferral state.[16]

Finally, it is significant that the corresponding Section 7(d) of the ADEA allows a complainant the extended period of up to 300 days to file a notice of

[16] Petitioner relies (Br. 32-33) on a statement submitted by Rep. Dent at the time of the House's consideration of the Conference Report indicating that a complaint must be filed within 180 days in a deferral state. It is not apparent that Rep. Dent was aware that certain states had limitations periods of more than 180 days, see *Doski* v. *M. Goldseker Co.*, 539 F.2d 1326 (4th Cir. 1976). In any event, this statement by a member in one of the two Houses considering the Conference Report cannot overcome the clear expression of congressional decision to incorporate the result in *Vigil* as the authoritative intent of the Congress and the EEOC's longstanding administrative interpretation in accord with the result in *Vigil*. As noted above, the state complaint in *Vigil* was filed *after* expiration of the 90-day (now 180-day) period.

intent to sue with the Secretary in all "cases to which Section 14(b) applies." Section 14(b) of the ADEA, of course, contains the 60-day deferral period and therefore "applies" to all deferral states. Thus, the effect of the language in Section 7(d) of the ADEA is to extend the period for filing a notice of intent to sue with the Secretary of Labor to 300 days after the alleged discriminatory act on the sole ground that the act complained of occurred in a deferral state, regardless of when the person aggrieved first filed a complaint with the state agency. There is no reason to construe the corresponding provisions of Title VII any differently.[17]

[17] Should the Court conclude, contrary to our submission, either that a charge must be filed with the state agency within 180 days of the alleged discriminatory occurrence or that it must be filed within 240 days to allow the state up to 60 days to consider it before the charge can be deemed formally "filed" with the EEOC, that conclusion should not be applied to complainants, such as respendent herein, for whom the applicable deadline would have passed before the Court's decision was announced. Many complainants may have relied on the EEOC's longstanding interpretation of the Act, as embodied in EEOC regulations. The rationale for not applying the Court's holding to these complainants would be the same as the justification for tolling of a statute of limitations when necessary to do substantial justice. See *American Pipe & Construction Co.* v. *Utah*, 414 U.S. 538 (1974); *Oscar Mayer & Co.* v. *Evans*, *supra*, 441 U.S. at 759, 764-765 & n.13, and cases cited; *Crosslin* v. *Mountain States Tel. & Tel. Co.*, 400 U.S. 1004 (1971). Such a result is also supported by this Court's decision in *Chevron Oil Co.* v. *Huson*, 404 U.S. 97, 105-109 (1971), in which the Court declined to apply retroactively a decision concerning the application of a statute of limitations.

CONCLUSION

The judgment of the court of appeals should be affirmed.

Respectfully submitted.

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